Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of the Implementation of the Telecommunications Act of 1996 Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information	CC Docket No. 96-115

COMMENTS OF AMERITECH ON CUSTOMER PROPRIETARY NETWORK INFORMATION

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SUMMARY

Ameritech agrees with the Commission's determination to issue rules interpreting the provisions of Section 222 of the Telecommunications Act of 1995, even though the Act provides no express mandate for such rules. However, the new rules should be issued prospectively, and without prejudice to actions already taken by carriers to comply.

Ameritech likewise agrees with the Commission's three main categories of telecommunications services for CPNI purposes, subject to Ameritech's understanding that whenever the service with which the CPNI is to be used is within the same category as the telecommunications service from which the CPNI was derived, the CPNI may be used by any affiliate of the carrier originally obtaining the CPNI, regardless of customer consent. Furthermore, even though CPE and information services are not themselves telecommunications services, they may be used in providing telecommunications services, and accordingly they are eligible for CPNI under the express terms of Section 222.

Although a written notification advising customers of their right to restrict the use of their CPNI may be appropriate for the majority of customers, the option of an oral notification. if it is expressly assented to, should also be allowed in order to provide for unusual circumstances.

Section 222 does not specify the form of the customer's consent that is required to authorize the use of information across categories. Ameritech submits that the customer's approval may be oral, in writing, or implied from the customer's electing to make no response to a written notice concerning his or her right to restrict the use of CPNI. Section 222(c)(2) shows that Congress was perfectly capable of specifying "an affirmative written request" when that was what it meant, and the deliberate omission of both of those words from Section 222(c)(1) means unmistakably that the customer approval required by 222(c)(1) need not be in writing and also need not be affirmative.

Furthermore, nothing about Section 222 indicates a Congressional intent to preserve the CPNI rules of Computer III, and accordingly those rules should be eliminated.

Finally, there is no need for further LEC procedures to enforce Section 275(d), since LECs already emphasize the importance of guarding against the potential misuse of information concerning the occurrence and content of customer communications.

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Ameritech[1] hereby responds to the Commission's Notice of Proposed Rulemaking released May 17, 1996, on the subject of the treatment of customer proprietary network information ("CPNI") under Section 222 of the Telecommunications Act of 1996. In these comments Ameritech will discuss its views of the categories of services that the Commission has proposed, the formal requirements for notification and customer consent to the use of CPNI, the retention of the existing Computer III CPNI rules, the protection of alarm company information, and the providing of subscriber list information.

[1] Ameritech comprises Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, Wisconsin Bell, Inc., and various affiliates.

I. Implementation of CPNI Provisions

A. *The Commission Should Not Disturb Actions Already Taken Under Section 222*

As the NPRM points out, Section 222, unlike several other important provisions of the Act, does not require the Commission to promulgate any regulations to interpret or enforce the law, and the Commission seeks comment upon its decision to consider the issuance of such regulations in the absence of a statutory mandate. Ameritech fully supports the Commission's determination to proceed, since the Commission's actions are likely to resolve doubts and promote uniformity in the interpretation of the law. However, Ameritech urges the Commission to be sure that its regulations operate only prospectively. Section 222 became effective the moment the Act was approved, and carriers were required at that time to comply immediately, without knowing whether the Commission would ever address these issues. Under those circumstances, Ameritech has already obtained a large number of customer approvals for the use of CPNI under Section 222. In order that these efforts not be wasted, and in order to protect customers from the inconvenience of further solicitations seeking to correct technical defects in consents they have already given, Ameritech requests that the Commission specify that its rules will not operate retroactively and that consents obtained in good faith and in substantial compliance with Section 222 remain valid.

B. *The Commission's Categories Are Reasonable, but CPNI May Also Be Used in Connection with CPE and Information Services.*

In Paragraph 22 of the NPRM, the Commission has stated its tentative conclusion that Section 222(c)(1)'s reference to "telecommun-

ications service" should be construed to mean that the Commission should establish categories of telecommunications services such that CPNI obtained in connection with one category may not — except, of course, with the customer's approval, or in the case of the law's other enumerated exceptions — be utilized in regard to one of the other categories.[2]

Ameritech does not believe that such a reading is necessarily compelled by the statutory language, which could just as easily be read to mean that telecommunications itself is a single category. Under the latter reading, the main effect of the statute would be to provide that CPNI gathered during the process of providing telecommunications is not to be used in connection with the promotion of unrelated products like corn flakes or mutual funds. However, the tentative conclusion reached by the Commission, that the statute directs the Commission to divide the telecommunications world into distinct categories, is also an acceptable reading of the law. Furthermore, Ameritech believes that the three telecommunications categories the Commission has proposed — local, interexchange, and mobile — are workable and reasonable.[3]

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[2] Section 222(c)(1) states: "Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories."

[3] The Commission suggests in Note 38 of the NPRM that it may consider in a separate proceeding whether services in the mobile category should be further subdivided. Ameritech submits that there is no need for any such

(Footnote Continued . . .)

This concurrence is, of course, subject to Ameritech's assumption that the Commission reads the statute the way Ameritech does (which seems to be the only allowable way to read it), that if Section 222(c)(1) otherwise permits CPNI to be used — because it will be used for a purpose within the same category, or because the customer has consented to its use across categories — it may be used not only by the telecommunications carrier that originally obtained the information, but also by any affiliate of that carrier, whether or not that affiliate is also a telecommunications carrier.

On the other hand, despite Ameritech's general agreement with the three categories, Ameritech urges the Commission to reconsider what it seems to have assumed in Paragraph 26 of the NPRM that CPNI may not be used in connection with information services and customer premises equipment ("CPE").[4] This is not a correct reading of the law's requirements. Even though CPE and information services are not "telecommunications,"[5] Section 222 does not confine the use of information derived from telecommunications to the scope of any

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(Footnote Continued . . .)

additional proceeding. Mobile radio is appropriately one category and the Commission should decide that now.

[4] Of course, enhanced services and CPE are already in a special category under Computer III as far as AT&T, the BOCs, and GTE are concerned. Ameritech shows later in these Comments why those rules should be removed from the BOCs, and even if the Computer III rules are not removed, the status of information services and CPE under Section 222 still needs to be resolved for all of the non-Computer III carriers.

[5] The Act's definition states: "The term 'telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."

actual telecommunications being provided, for the language also permits use of the information in regard to "services necessary to, or used in, the provision of such telecommunications service." It is not required that a service thus used in providing telecommunications be itself a telecommunications service, and therefore both information services and CPE may, according to circumstances, qualify as services used in the provision of some telecommunications service from which CPNI is derived. Accordingly, information services and CPE, to the extent they are provided by a telecommunications carrier, must be considered part of that carrier's local, long distance, or mobile categories.[6]

This broad interpretation is not only compelled by the statutory phrasing, but is also in harmony with the evident purposes of the legislation. If information services and CPE were to be excluded from association with the three main categories of telecommunications services, many of the advantages of "one-stop shopping" and other desirable objectives of the new law will have to be forgone. There are many natural affinities between telecommunications services and information services, as well as between telecommunications services and CPE. Allowing CPNI to be mingled among those categories will not

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[6] This is not to say that the fact that both information services and CPE are not "telecommunications" is wholly without significance. Indeed, on the contrary, § 222(c)(1) does not even apply unless the CPNI in question is obtained "by virtue of its [*i.e.*, the carrier's] provision of a telecommunications service." Thus it is clear that under § 222, CPNI or any other information derived from the provision of any *non*-telecommunications service, including both information services and CPE, may be used in connection with the provision or marketing of any telecommunications service regardless of the telecommunications service categories and regardless of customer approval.

have deleterious effects upon customers' expectations of privacy, since customers might themselves naturally expect them to be combined. Voice mail, which presumably is an information service, is a prime example of this phenomenon. In fact, voice mail is the service used by the Commission itself in a recent order to illustrate the positive consumer benefits of allowing basic CPNI to be used in connection with enhanced services:[7]

> With integrated marketing and sales, the BOC service representative receiving a call can also offer consumers additional choices that may better suit their needs, including combinations of basic and enhanced services. For instance, a customer service representative might suggest a voice mail service to record messages when the customer's line is busy as a more economical alternative to ordering additional lines. If a prior authorization rule were applied to all customers, only the largest business customers would be able to enjoy the one-stop-shopping benefits of the integrated marketing of basic and enhanced services.

Benefits such as these should not be lost through an excessively narrow construction of Section 222(c)(1) that does not include voice mail as a service that is used in connection with "telecommunications." Accordingly, the Commission should carefully examine the status of CPE and information services and conclude that they are vitally related to the three categories of telecommunications services under Section 222(c)(1).[8]

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[7] *In re* Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, CC Docket No. 90-623, 6 FCC Rcd 7571, 7610 (1991), at ¶ 94.

[8] The Commission also asks in Paragraph 22 of the NPRM for comment on the effect future changes in technology will have on the telecommunications services categories that the Commission has identified. While it may yet be too soon to attempt to particularize the details of those effects, it cannot be denied that they are likely to be profound. For example, it is already believed that Personal Communications Services ("PCS") will soon be

(Footnote Continued . . .)

C. *Carriers Should Be Allowed To Choose Oral or Written Notification.*

In Paragraph 28 of the NPRM, the Commission has stated a tentative conclusion that telecommunications carriers must provide notice informing customers that the customers are able to restrict access to their CPNI. In addition, the Commission has sought comment on whether such notice may be "given orally and simultaneously with a carrier's attempt to seek approval for CPNI use," or whether, on the other hand, advance written notice should be required.

In its prior orders dealing with CPNI, the Commission has never required any customers to be notified of their right to restrict the use of CPNI, other than multi-line business customers, who have been entitled to an annual written notice under the pre-existing rules that applied to the BOCs.[9] Nevertheless, since Section 222(c)(1) now expressly requires, for the first time, that a carrier may not use CPNI for marketing services beyond the category from which the CPNI is derived unless it has "the approval of the customer," Ameritech does not seek to dispute the Commission's tentative conclusion that the customer must have received some form of notification of his or her CPNI rights in order for any subsequent "approval" — whether it be given orally, in writing, or by implication — to be valid.

(Footnote Continued . . .)

regarded as an adjunct to local landline service, rather than an aspect of cellular.

[9] As discussed below, we believe Section 222(c) adequately addresses competitive and customer privacy issues. Therefore, the pre-existing CPNI rules should be eliminated.

However, Ameritech submits that carriers should be allowed to choose which (but not both) of these methods of notification is to be used with any particular customer. Even if the carrier chooses to employ the written notification method for the majority of its customers, which it may well choose to do in the interests of economy and efficiency (since the written notification can easily be mass produced), still the carrier and the customer should be allowed the flexibility of being able to agree among themselves to dispense with the need for written formalities, in order to deal with situations where time is of the essence or in other circumstances.

Ameritech believes that this flexible combination formed from the oral and written methods of notification constitutes, to track the Commission's words in the NPRM, "the least burdensome method of notification that would meet the objectives of the 1996 Act." Moreover, any possibility of abuse associated with the oral notification method would be dispelled by requiring the customer to give his or her consent to the oral proposal affirmatively. Indeed, the form of oral notification adverted to in the NPRM is an oral notice that is "given . . . simultaneously with a carrier's attempt to seek approval for CPNI use." Once the carrier and the customer have become engaged in a direct conversation on the subject of the customer's CPNI, it is reasonable to require that only a positive, affirmative response could be an actual approval. Accordingly, the Commission should allow the oral notification method, subject to the condition that consent to an oral notice

may not be inferred from the customer's mere silence, but must be given affirmatively, orally or in writing.[10]

D. Customer Approval May Be Oral, Written, or Implied.

In paragraphs 29–33 of the NPRM, the Commission has sought comments on the form of the authorization needed to meet the test under Section 22(c)(1) of having obtained "the approval of the customer." The Commission does not state any tentative conclusion as to the approval requirements, and correctly observes that the statute merely requires approval, "without indicating whether the approval has to be written or oral."

Ameritech submits, however, that there is another allowable form of approval under the statute that the Commission seems to have overlooked and that is neither written nor oral, but which consists of the customer's informed acquiescence in, or non-response to, a written notification as to CPNI rights as discussed and described in the previous part of these Comments. Ameritech believes that Section 222(c)(1) contemplates and permits that type of passive consumer approval and that this interpretation is easily established by proper analysis of the statutory language. The Commission has rightly begun that analysis by comparing Section 222(c)(1) to Section 222(c)(2), where Congress has expressly specified a requirement for an "affirmative written

[10] In other words, only a written notice of one's CPNI rights should be sufficient to support a finding of acquiescence by silence as discussed in the following section of these Comments.

request by the customer."[11] The Commission reasons that this "suggests that Section 222(c)(1) allows oral approval, because unlike 222(c)(2) it does not specifically require written authorization."

The Commission's analysis is unerring up to this point, but still doesn't go far enough, for Section 222(c)(2) requires not only that the customer's request be in writing, but also that it be *affirmative.* Thus the proper inference to be drawn about Section 222(c)(1), where Congress deliberately decided to omit *both* those words, is that the customer approval required in that section not only need not be in writing, but need not be affirmative, either. In other words, a passive approval, or an omission to respond to a written notification sent by the carrier advising the customer of his or her ability to restrict the use of CPNI, should be adequate to constitute approval under the statute — provided, of course, that the customer is fully informed not only of the right to restrict CPNI use, but also that the result of his or her not responding will be taken as approval. (That, of course, is the important function of the notification prepared by the carrier.)

The giving of customer approval by this method has several advantages. Most prominently, from the customer's point of view, it insulates the customers from the repeated persistent efforts of carriers to "follow up" on customers who have not yet responded. That will be no small benefit to the customer, given the multiplicity of carriers who may potentially serve the same customer in the competitive market the

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[11] Section 222(c)(2) states: "A telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer."

legislation is establishing. At the same time, of course, customers who do wish to restrict their CPNI will have the opportunity to do so. Moreover, such form of approval is not uncommon in transactions involving consumers who number in the thousands or millions. Congress was surely aware of these common practices, and thus when it chose to omit from the language of Section 222(c)(1) the requirement that the consumer's approval be affirmative, it did so deliberately, and in order to ratify the form of passive consumer approval that is in place universally elsewhere in the commercial world.

The Commission has also raised other issues concerning consent. It has asked how long a consent should be valid, to which Ameritech responds that it should be valid until revoked by the customer. It has also asked whether a customer can authorize partial access to its CPNI; Ameritech sees no reason to question the customer's ability to do so. Finally, it asks whether the law allows outbound telemarketing programs to gain the customer's consent. Ameritech believes there should be no doubt that such outbound marketing is allowed; the fact that the statute contains an express provision for inbound telemarketing in Section 222(d)(3) does not preclude the use of outbound telemarketing, since the evident purpose of 222(d)(3) is merely to provide a customer who has already restricted the use of his or her information with a means to revoke that restriction temporarily during an inbound telemarketing call.

E. CPNI May Be Used in Connection with The Customer's Other Services.

Paragraph 26 of the NPRM seeks comments on whether Section 222(c)(1)(B) permits carriers to use CPNI derived from the

provision of one telecommunication service to perform installation, maintenance, and repair for any telecommunication service to which the customer subscribes. Ameritech believes that this question must be answered in the affirmative, not only as to installation and repair but as to the carrier's ability to use CPNI across categories for any purpose where the same subscriber has services from different categories. If the same customer already has different services from the *same* carrier (or from different affiliates within the same corporate family), the customer no longer has the type of expectation of privacy that the law was intended to vindicate.[12]

F. No Special Safeguards Should Be Imposed On Internal Handling of CPNI.

In Paragraphs 35–36 of the NPRM, the Commission has tentatively concluded that all telecommunications carriers must establish sufficient safeguards to protect CPNI. The Commission noted that AT&T, the BOCs, and GTE currently are required to implement mechanized CPNI safeguards and asks whether these should be kept in place. The Commission tentatively concluded that it should not specify safeguards for all other telecommunications providers.

In addressing the latter two issues, the Commission must be mindful of the fact that Congress did not intend there to be any distinction

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[12] The Commission suggests that an alternate road to the same result would be to find that the installation, maintenance and repair were services "necessary to, or used in" the other category. Ameritech agrees with either of these interpretations. The Commission also asks in Paragraph 26 what else might be "necessary to, or used in" a telecommunications service. The principal answer is that CPE and information services are in that category, as discussed elsewhere.

between different telecommunications carriers as to the applicability or effect of Section 222. Congress was very specific in the Act where it intended to apply restrictions to a specific category or group of carriers —incumbent LECs, BOCs, etc. In this case, the provisions of Section 222 apply to "every telecommunications carrier." There is nothing that would justify treating different carriers differently in rules implementing this section.

With that in mind, Ameritech would agree with the proposition that the Commission need not specify requirements for safeguards against unauthorized access to CPNI for "all . . . telecommunications carriers." When the statute says telecommunications carriers may "disclose or permit access to" CPNI only for limited purposes, those terms must be construed as applying to disclosure to or access by persons *outside* the organization. A carrier is assumed to have access to its own CPNI because its employees have custody of the information. And, as noted above, internal access to customer information within an organization should not create unusual privacy concerns. Internal access restrictions are such an unusual and extraordinary phenomenon that, if Congress did not specify that they be implemented, they should not be implied.

That being the case, and since, as noted below, the current CPNI rules for BOC provision of CPE and enhanced service should be eliminated, the existing requirements for computerized internal blocking should be eliminated. In this regard, it should be noted that those systems have been implemented only with CPE and enhanced services in mind — not with any distinctions that may be required by the Act.

Instead, the Commission should recognize that the Act's internal prohibitions are on unauthorized *internal use* and unauthorized *external access or disclosure*, which can be implemented by appropriate company practices and procedures and education. Any Commission requirements in that regard should acknowledge the fact that that Congress intended all telecommunications carriers to be bound equally.

G. The Commission's Computer-II-Based CPNI Rules Should Be Eliminated.

The Commission's current CPNI rules were developed in proceedings that involved the substitution of "non-structural safeguards" for Computer II's separate subsidiary requirement for the provision of CPE and enhanced services.[13] The Commission has inquired, in paragraphs 3 and 41 of the NPRM, whether those rules are necessary any longer in light of Section 222. The answer is that they are not necessary. As noted by the Commission, Congress specifically took both customer privacy and competitive concerns into account in establishing the provisions of Section 222. (NPRM ¶ 15 n.60; see also title of Section 222.) There is absolutely no indication that Congress intended that any other mechanism exist to protect either privacy or competitive concerns arising from the use of CPNI. The fact that the statute uses the FCC's own terminology — CPNI — without providing that the FCC's rules should remain in place is an indication that the statute

[13] *See generally* the orders in CC Doc. Nos. 86-79, 85-229, and 90-623.

was meant to supplant the FCC's current CPNI. There is good reason that that should be the case.

First, there is no need for a separate set of FCC CPNI rules outside the context of Section 222 to safeguard privacy interests. As the Commission itself noted with respect to privacy, use by a business of its own customer information does not, in general terms, "raise significant privacy concerns."[14] As a result, there is no reason to believe that Congress intended to leave in place any greater privacy protection with respect to the use of CPNI than the Act itself provides. Therefore, from the privacy standpoint, the Commission's current rules dealing with a business's use and handling of its own CPNI should give way to the provisions of the Act.

Second, there is similarly no need for a separate set of FCC CPNI rules outside the context of Section 222 to protect competition. Congress clearly contemplated that, because of the statute, a new competitive environment will arise; and it took pains to articulate safeguards where it felt they were necessary. The ability of LECs to unfairly leverage their alleged local "bottlenecks" will disappear because legal and uneconomic barriers to local competition will be eliminated by the Act. Henceforth, as the Act provides, competition will be on economic terms. The fact that the statute incorporates two competitive provisions virtually identical to ones contained in the FCC's rules is a clear indication that Congress intended the Act to be the final word on the

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[14] *In re* Computer III Remand Proceedings, CC Doc. 90-623, Report and Order, FCC 91-381, 6 FCC Rcd. 7571 (released December 20, 1991) at note 159.

competitive aspects of CPNI as well. Specifically, the Act provides that the carrier must honor a written request from a customer to disclose CPNI to any other party (read: competitor) and make available aggregate CPNI to others (read: competitors) if it is used for a purpose other than those listed in Section 222(c)(1).

Moreover, the times that gave rise to the FCC's CPNI rules have changed and will be even more dramatically transformed with the implementation of the competition-enhancing provisions of the Act. With respect to CPE, the FCC adopted the CPNI rules as a non-structural safeguard virtually on the heels of divestiture. Customers were accustomed to getting their CPE bundled with their local phone service. As divestiture and Computer II itself left many customers confused about their options, the Commission had a concern that, in this environment, the BOCs could leverage their "monopoly" power to dominate the CPE market. Obviously, things are very different today. Everyone knows that he or she can get CPE anywhere — Radio Shack, Service Merchandise, Sears, or free with a magazine subscription. And while, CPNI might be useful in marketing CPE, it is no more valuable than information about a person's purchases of electronic equipment.

Similarly, with respect to enhanced services, there was some concern that, with the information services industry in the start-up mode, the BOC could dominate when they were permitted to enter the marketplace. Today, information service providers abound -- from voice mail to fax processing to "on-line" services and Internet access. There is no confusion in the market that providers of these services exist independently of the BOCs. And again, while CPNI might be some-

what useful in marketing these services, it is probably much less valuable than other information about a person's buying characteristics.

In short, Section 222 must be viewed as Congress's comprehensive answer to questions about how CPNI should treated, not only from a customer-privacy perspective, but from a competitive standpoint as well.

II. Availability of Subscriber List Information Under Section 222(e)

In Paragraphs 43–46 of the NPRM, the Commission has invited comments on the scope of a carrier's obligation to provide subscriber list information under Section 222(e).[15] Generally, in addition to the remarks that follow, Ameritech supports the Comments being contemporaneously filed by the Yellow Pages Publishers Association ("YPPA") and encourages the Commission to consider YPPA's comments as a representative voice of the directory publishing industry.

Ameritech agrees with the Commission's proposal to apply Section 222(e) to all telecommunications carriers furnishing local telephone service. Also, in response to the Commission's request, Ameritech defines the term "primary advertising classification" used in Section 222(f)(3) to be the classified (yellow pages) directory heading

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[15] Section 222(e) states: "Notwithstanding subsections (b), (c), and (d), a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format."

assigned to a subscriber's account at the time arrangements for local service are established between the subscriber and the telecommunications carrier. Typically, telecommunications carriers assign classified directory headings based on a list of headings supplied by the telecommunications carrier's directory publisher. In cases where subscribers fail to provide a classified directory heading at the establishment of service, the telecommunications carriers should not have any further obligation to subsequently gather or provide this information.

Ameritech further agrees with the Commission that the term "primary advertising classification" in Section 222(e) is used in a different manner than the term "advertising" in Section 274(h)(2)(i), and that subscriber list information does not fall within the definition of electronic publishing.

Ameritech believes that any regulations and procedures that the Commission may institute to insure compliance with the Act's requirement that subscriber list information be provided "on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions" should be structured to furnish any directory publisher with the opportunity to acquire the required subscriber list information from a given telecommunications carrier in a manner equivalent to that utilized by the directory publisher of that telecommunications carrier. Subscriber list information products and prices offered to the telecommunications carrier's directory publisher should be the same as those offered to other directory publishers. An unbundled basis would mean that no additional products or unreasonable number of listings must be purchased by directory publishers. The

Commission should allow for reasonable formats in sorting a subscriber list information that are based on the existing system capabilities of each telecommunications carrier

In addition to extracts of subscriber list information from its listing data base, Ameritech also makes available subscriber listing information for just those subscribers that have made changes to their listing information (*i.e.* new listing, change of name, etc.). This enables directory publishers to minimize expenses and purchase only "updated" information to support their sales efforts rather than all the subscriber listing information for a given marketplace.

Ameritech would however urge the Commission to specify that purchasers of subscriber listing information for the purpose of "publishing directories in any format" do so in writing. To minimize potential disputes, the written request for subscriber listing information should specify the subscriber listing information being requested, the directory to be published, the date the directory will be published, the format of the directory, and the format of the information being requested.

The Commission's role in subscriber list information issues should be one that is based on reasonableness and seeks to enable both the telecommunications carriers and the directory publishers to freely negotiate nondiscriminatory agreements in response to the forces in the marketplace.

III. LEC Procedures To Comply with the Customer Information Requirements of Section 275(d)

In Paragraph 47 of the NPRM, the Commission has invited comments on Section 275(d) of the Act.[16] That subsection prohibits the misuse of "the occurrence or contents of calls received by providers of alarm monitoring services" for marketing of other providers' alarm services. It applies not only to BOCs or incumbent LECs, but to all LECs. The statute does not mandate that the Commission must issue regulations on this subject, but provides that if any regulations are found necessary, they must be issued "initially" within six months of the law's enactment. Paragraph 47 of the NPRM asks whether any further LEC procedures are necessary to ensure compliance with this new provision.

Ameritech submits that adequate procedures are already in place in all LECs to guard against misuse of information concerning the occurrence or contents of calls made or received by *all* LEC customers, not just those involved with alarm service. Certainly, to the extent that Section 275 refers to the content of actual communications between customers, the information at issue is fundamentally different than the CPNI dealt with in Section 222. Long before there was a Section 275, it was already a federal crime for an employee of a carrier to disclose the

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[16] Section 275(d) states: "A local exchange carrier may not record or use in any fashion the occurrence or contents of calls received by providers of alarm monitoring services for the purposes of marketing such services on behalf of such local exchange carrier, or any other entity. Any regulations necessary to enforce this subsection shall be issued initially within 6 months after the date of enactment of the Telecommunications Act of 1996."

contents of interstate communications,[17] and that fact is prominently emphasized in the code of conduct applicable to all employees. Any special efforts made to enforce Section 275 by ensuring that employees do not monitor or record calls to and from alarm companies will have the undesirable effect of undercutting the message that employees should not monitor or record calls to and from *any* customer. Similarly, there is no need to emphasize that eavesdropping and wiretapping may not be done for anticompetitive purposes when there is already an ongoing campaign to prohibit those practices when done for *any* purpose beyond those specifically permitted by law. Accordingly, Ameritech submits that there is no need at this time for any special LEC procedures to encourage compliance with Section 275.

Of course, Ameritech does not oppose the Commission's tentative conclusion that consents obtained for the use of CPNI under Section 222 should not be construed to apply to the type of information specified in Section 275.

IV. Conclusion

In Section 222(c)(1), Congress has forbidden, in the absence of customer approval, the use of customer proprietary network information derived or obtained from the providing of one category of telecommuni-

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[17] Electronic Communications Privacy Act of 1986, 18 U.S.C. §§ 2510–2520, 2701–2709. It is now lawful under federal law for a carrier to divulge to any person other than a government entity the fact that a communication was made, but not the contents thereof, *see* 18 U.S.C. § 2703(c)(1)(A), but Ameritech's code of conduct has never been revised to reflect that change in the law, since some state laws still prohibit such disclosures, and in any case it is contrary to Ameritech's own policies to release such information.